D2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 02 267 53269 Office: VERMONT SERVICE CENTER Date: JAN 09 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations for review. The appeal will be dismissed. The petition will be denied.

The petitioner is a nonprofit university, hospital and research center that employs more than 7,600 persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as a programmer/analyst. The director denied the petition on the basis that the beneficiary is not qualified to work as a programmer/analyst.

On appeal, the petitioner submits a brief and additional evidence.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Implicit in the director's denial letter is his conclusion that the proffered position is a specialty occupation that requires the beneficiary to hold, at a minimum, a bachelor of science degree in computer science, information science, management information systems (MIS), or the equivalent combination of education, training and experience. In denying the petition on the basis of the beneficiary's qualifications, which include a bachelor of arts degree in economics, a master of science degree in counseling psychology from Temple University and work experience in the proffered position, the director stated the following:

> [The petitioner] submitted a statement from the university attesting to the beneficiary's qualifications and a copy of the beneficiary's college transcript. The statement from the university makes reference to computer courses the beneficiary took in the attainment of her degree. A check of the beneficiary's college transcript does show that [the] beneficiary took three computer courses. The Service does not consider three computer courses sufficient evidence that the beneficiary is qualified to do the proffered "specialty occupation." The university also

> notes the skills the beneficiary obtained while working as a Graduate Assistant and part-time employee. The skills obtained through the beneficiary's work experience might give her the skills necessary to perform the proffered position. However, without an evaluation from an official who has the authority to grant college-level credit in the profession the Service is unable to determine the beneficiary's skill level and thus is unable to make a favorable decision at this time.

On appeal, the petitioner explains that the proffered position is a programmer/analyst position within the Institute for Survey Research ("Institute"). The petitioner states that the Institute conducts both private and publicly-funded survey research using Computer-Assisted Survey Execution System (CASES) software to collect and process survey data. According to the petitioner, the beneficiary would design, review and develop survey questionnaires using the CASES software, coordinate departmental operations, and supervise data processing clerical staff. The petitioner contends that the proffered position is a specialty occupation because "[t]he minimum educational requirement for this position is a bachelor's degree from a four-year college or university as well as 2-3 years' related experience and/or training or the equivalent combination of education and experience." The petitioner claims that the standard in the industry among research institutes is to hire individuals with a bachelor's or higher degree, who do not necessarily have backgrounds in computer science. The petitioner contends, therefore, that the director is incorrect when he states that the beneficiary would need a bachelor's degree in computer science, information science or MIS in order to perform the duties of the proffered position.

The petitioner states that the number of computer classes taken by the beneficiary is not germane to the issue of whether she is qualified for the proffered position, as the director noted in his denial letter. The petitioner submits letters from several research institutes to support its claim that in order to use the CASES software, an individual does not need a degree in a computer-related field. Rather, the petitioner maintains that the combination of the beneficiary's bachelor's and master's degrees and her work experience with the CASES software as a research assistant qualifies her for the proffered position.

8 C.F.R. 214.2(h)(4)(iii)(C) states:

> *Beneficiary qualifications*. To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:
>
> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from

an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

According to the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, systems analysts usually hold a bachelor's degree in computer science, information science, or management information systems (MIS). While the petitioner states on appeal that "it is undisputed that [the beneficiary] has the requisite four-year bachelor's degree for the position," it presents no evidence in support of this assumption. The beneficiary's resume indicates that she received a bachelor of arts degree from Ohio Wesleyan University with a major in economics and a minor in psychology. The petitioner does not support its assertion that such a degree is a requirement for the position of a programmer/analyst within the Institute.

Regarding the petitioner's claim that the beneficiary's combination of education, training and experience is required by the proffered position, the petitioner submits a letter from Anne Shlay, an Associate Dean in Temple University's College of Liberal Arts. According to Dr. Shlay, she possesses the authority to confer college level credit for "life experience." The petitioner submits this letter in response to the director's statement that the petitioner did not comply with the regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(1) regarding an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

According to Dr. Shlay:

I have worked with the Institute for Survey Research,

> and with [the beneficiary] on several recent projects. The experience that [the beneficiary] has acquired at ISR has provided her with adequate skills to fulfill the job as a CASES programmer as was evidenced by her work on a Study of Barriers to Childcare Subsidies and on a study of Childcare Arrangements for Families in Pennsylvania. Further note that there is no such program available at Temple University or elsewhere that provides certification to CASES programmers. . . .

The Service uses an evaluation of an individual's credentials as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

Here, Dr. Shlay does not equate the beneficiary's education, training and experience to any type of a bachelor's or master's degree. She does not state that she reviewed the beneficiary's academic credentials and letters from past employers to reach her conclusion that the beneficiary possesses the skills required of the position; she simply concludes that the beneficiary is qualified for the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, Dr. Shlay's evaluation carries no weight. There is insufficient evidence that the beneficiary possesses the qualifications to successfully perform programmer/analyst duties. Thus, the director's decision will not be disturbed.

Beyond the decision of the director, the proffered position does not qualify as a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

It is incumbent on the petitioner to establish that the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in a specific specialty as the minimum for entry into the occupation as required by the Act. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000).[1] Factors that the Service considers include, but are not limited to, the petitioner's self-imposed standards and the standards of the industry for similar positions. While the petitioner has established that an individual who holds the position of a programmer/analyst for the CASES system must possess a bachelor's degree, neither the petitioner nor the industry requires the degree to be in a specific specialty. For this reason, the proffered position cannot be considered a specialty occupation.

Regarding the degree requirement, the petitioner's own self-imposed standards for the position require only that a prospective employee possess a bachelor's degree. The petitioner has not shown that the bachelor's degree must be in a specific specialty. Additionally, letters from other Institutes that employ programmers/analysts for the CASES system illustrate that individuals from varied educational backgrounds can successfully execute the duties required of the position.

Merrill Shanks, the Director of the Computer-Assisted Survey Methods (CSM) Program at the University of California at Berkeley, states that ". . . most CASES users have academic backgrounds outside of computer science, and they typically acquire their expertise on the job - with or without participation in a CSM Training Workshop. Susan Brownlee, a Survey Research Analyst at the Rutgers Center for State Health Policy, states that CASES programming is learned through experience. Ms. Brownlee, who is a CASES programmer/analyst also notes that she has a Ph.D. in psychology.

John Stevenson, the Associate Director of the University of Wisconsin Survey Center, states that none of the programmers/analysts at the Survey Center have formal programming training. Mr. Stevenson lists the degree specialties that are

---

[1] The court in Defensor v. Meissner observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See id. at 387.

held by the programmers/analysts as sociology, creative writing, and environmental science. According to Mr. Stevenson, a programmer/analyst in the Survey Center needs intimate knowledge of social science research methods and techniques, but little training in computer science.

Kevin Tharp, the Assistant Director of Survey Technologies at Indiana University Center for Survey Research, states that most of the CASES programming at the university is done by individuals who do not have extensive computer backgrounds. According to Mr. Tharp, CASES is a specialty software system that one can learn through experience. Mr. Tharp does not list the educational backgrounds of the university's programmers/analysts for the CASES system.

Finally, Dan Hoyt, the Director of the Bureau of Sociological Research at the University of Nebraska-Lincoln, states that programmers from his department "have come from a variety of educational levels." Mr. Hoyts maintains that: "The best matches for us have been bright individuals who have advanced training in the social sciences (with the emphasis on research methodologies and data processes) who can learn the specifics of CASES programming needs on the job."

It is apparent from these letters that a degree in a specific specialty is not a minimum requirement for the proffered position within the petitioner's industry. Other research institutes have employed individuals with bachelor's degrees in varying occupational specialties such as psychology, sociology, creative writing, and environmental science. The authors of these letters convey that the skills needed to learn the CASES software system are usually found in an individual who has completed an undergraduate degree; however, the field of the individual's degree does not appear to be important. The programmers/analysts who are employed by the research institutes possess the ability to learn the CASES software system because they have completed undergraduate studies, not because those studies were in a specific specialty.

The petitioner has not established that it has, in the past, required its programmers/analysts for the CASES system to have a bachelor's degree or its equivalent in a specific specialty. The petitioner has stated that "[t]he minimum educational requirement for this position is a bachelor's degree from a four-year college or university as well as 2-3 years' related experience and/or training or the equivalent combination of education and experience." However, the petitioner has not submitted any evidence to support its assertion that related experience and/or training in addition to a bachelor's degree in any specialty is a minimum requirement for the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these

proceedings. Matter of Treasure Craft of California, supra. None of the individuals at the other research institutes indicates that both a bachelor's degree and two to three years of related experience and/or training are required to perform the duties of the proffered position. Most authors of the letters imply that only undergraduate training and an aptitude to learn the CASES system is required for the proffered position.

The critical element is not the petitioner's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. If the Service were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See Defensor v. Meissner, supra. at 388. As the record is presently constituted, the petitioner has not established that the proffered position can be performed only by an individual with a bachelor's degree in a specific specialty or its equivalent.

As the appeal is being dismissed on another ground, this issue need not be examined further. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.